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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,009	09/15/2003	Daniel Morf		1758
23639	7590	05/11/2005	EXAMINER	
BINGHAM, MCCUTCHEN LLP THREE EMBARCADERO CENTER 18 FLOOR SAN FRANCISCO, CA 94111-4067			BRUCE, DAVID VERNON	
			ART UNIT	PAPER NUMBER
			2882	

DATE MAILED: 05/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/663,009	MORF, DANIEL
	Examiner	Art Unit
	David V. Bruce	2882

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-8, 15-17, 19-21, 23, 25-29, 31-34, 36-40 and 42-53 is/are rejected.
- 7) Claim(s) 9-14, 18, 22, 24, 30, 35 and 41 is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 15 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 3-7, 15-17, 19-20, 25-29, 32, 34, 36-40, and 42-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Franciose US 5,077,769. Franciose shows all of the features of the instant invention including a radiation imaging procedure where operation data (such as gantry angle, etc) is formatted into pixels like image data picked up using a camera and added to the image data in real time (abstract, figure 6, column 4 lines 17-33, and column 5 lines 18-42).

3. Claims 1, 2, 44-7, 15-17, 19-21, 23, 25-29, 31-34, 36-40, and 42-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Wang *et al.* US 6,490,335 B1. Wang *et al.* shows all of the features of the instant invention including a radiation imaging procedure where operation data (such as gantry angle, etc) is formatted into pixels like image data picked up using a detector array and added to the image data in substantially real time (abstract, figure 7, column 5 lines 55-67, column 7 line 64 - column 9 line 67).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Franciose.

Franciose shows all of the features of the instant invention except the use of beam energy in the kilo-electron-volt range. It is well known to use a kilo-electron-volt range x-ray beam for imaging. It would have been obvious to one of ordinary skill in the x-ray imaging art to use a beam energy in the kilo-electron-volt range motivated by the desire to get good images.

***Allowable Subject Matter***

6. Claims 9-14, 18, 22, 24, 30, 35, and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. The following is a statement of reasons for the indication of allowable subject matter: the allowable subject matter includes the additional limitations of a mega-electron-volt energy beam (claim 9), radiation treatment (claims 10, 30, and 41), detector array reading specifics (claims 11-14), reading data absent the radiation beam pulse (claims 18 and 35), having the radiation system separate from the imaging device (claim 22), and having the radiation system be a simulator (claim 24).

*Conclusion*

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wang *et al.* US 6,522,714 B1 and Lonn *et al.* US 6,856,666 B2 show radiation imaging systems similar to Wang *et al.* and Franciose.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David V. Bruce whose telephone number is (571) 272-2487. The examiner can normally be reached on M - Th and alt Fri 8:00 - 4:30 subject to I-Flex.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward J. Glick can be reached on (571) 272-2490. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free),



David V Bruce  
Primary Examiner  
Art Unit 2882

dvb